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**IN SUPPORT OF
Senate Bill No. 426**

**AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT
PROTECTIVE PROCEEDINGS JURISDICTION ACT**

Judiciary Committee Public Hearing

March 12, 2010

Representative Lawlor, Senator McDonald and members of the Judiciary Committee, please accept this written testimony on behalf of the Connecticut Bar Association's Elder Law Section in support of Raised S.B. Bill 426, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act.

The members of the Elder Law Section support this consensus bill for the adoption of the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act (UAPPJA). The adoption of this uniform act has been endorsed by AARP, the Alzheimer's Association, the American Bar Association Commission on Law and Aging, the National Academy of Elder Law Attorneys, the National College of Probate Judges, the National Guardianship Association, and the Center for Guardianship Certification.

Elder law attorneys, guardians, conservators, and judges are frequently faced with sorting out complex jurisdictional issues caused by our society's increasing mobility and the demographics of an aging population. Adult guardianship matters are called conservatorships in Connecticut. Matters involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAPPJA will, when enacted, help effectively to address these problems.

The UAPPJA was approved by the Uniform Law Commission in the summer of 2007, with the corresponding commentary finished in late fall 2007. To date, twelve (12) states and the District of Columbia have enacted the Act. This year it is anticipated that an additional thirteen (13) states will act on this proposal. Jurisdictional issues for these matters commonly arise in situations involving

snowbirds, transferred/long-distance caregiving arrangements, interstate travel, and even the occasional incidence of elderly kidnapping. This act addresses the small number of contested interstate jurisdiction cases. This act also serves the much greater number of cases where there is no dispute in which citizens are seeking to facilitate transfers from state to state.

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian frequently arise because the individual has contacts with more than one state. In nearly all states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present, or has property.

Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

It is important to note that this act does not expand the jurisdiction of the probate courts. This uniform act in fact narrows the probate courts' jurisdiction in that it reduces the ability of probate courts to improperly grab jurisdiction over non-domiciliaries.

The UAPPJA addresses two issues that continue to impact guardianship law: multiple appointments due to jurisdictional issues and transferability of guardianships. The first objective of the Act is to create a jurisdictional scheme that solves the increasing problem of multiple states having the power to appoint a guardian. Under the current spectrum of state laws it is possible for two states to have a proper basis to exercise jurisdiction over a guardianship or conservatorship. Grants of jurisdiction based on an individual's domicile, present location, and property ownership have helped create numerous multi-jurisdictional disputes and have increased the amount of litigation. A primary cause of much of the confusion regarding what court has, or should have jurisdiction is the absence or disarray of statutory guidance on jurisdictional issues. The UAPPJA creates a process for determining which state will have jurisdiction to appoint a guardian if there is a conflict. It does this by designating that the individual's "home state" has primary jurisdiction, followed in priority by a state in which the individual has "significant connection." It eliminates the current festering problems created when parties use presence jurisdiction to forum shop.

To determine the court of primary jurisdiction, the Act utilizes a three level jurisdictional priority based upon an individual's "home state" followed by a "significant connection state" and lastly another state. An individual's "home state" is defined as the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding. The home state has primary jurisdiction to appoint a guardian or conservator and this priority continues up to six months following a move to another state. A significant jurisdiction state has jurisdiction if an individual has not had a home state within the past six months or is the home state declines jurisdiction. If the home state and all significant connection states decline jurisdiction a court of another state can take jurisdiction.

Once a court has jurisdiction over the guardianship proceeding, the jurisdiction continues until the proceeding is terminated or transferred. Enacting a mechanism for continuing jurisdiction will reduce the number of multiple orders, reduce litigation costs, and provide individuals with orders that will be valid and accepted throughout the country.

The second objective of the UAPPJA is to provide procedures for the transferability of guardianships between states. Few states currently have procedures for transferring guardianships. Because of this deficiency in state law, it is often necessary for a family or a ward to initiate a new proceeding for the appointment of guardian. Appointment proceedings for a guardian are an expensive and time consuming process. A proceeding must comport with all due process requirements and individuals must often resubmit forms, such as medical records, necessary for the appointment to go forward. The Act specifies a procedure for transferring and accepting a guardianship to another state, helping to reduce expenses and conserve judicial resources while protecting incapacitated persons and their property from potential abuse. It helps facilitate enforcement of guardianship and protective orders in other states through a registration process. It also facilitates communication and cooperation between courts of different jurisdictions in sorting out these jurisdictional issues. Because of the current absence of ways to resolve these all too prevalent interstate jurisdictional quandaries, widespread passage of the act should result in significant judicial economy, reduction in wasteful litigation, and conservation of the incapacitated person's estate.

To transfer a guardianship, both the court transferring the case and the court accepting the case must issue a court order. Generally these orders will state that the individual will be moving permanently to the state, that arrangements have been made for the disposition of the individual's property, and that the sending court is satisfied the receiving court will accept the case.

Finally, in order to facilitate enforcement of guardianship orders, the UAPPJA allows a guardian to register the order in other states. Upon registration, the guardian may exercise all powers authorized in the order of appointment except those prohibited under the laws of the registering state. The registration procedure reduces the likelihood that a state will refuse a guardians authority and require the filing of a new petition.

It is expected that UAPPJA will be widely enacted throughout the nation in the coming year. The Elder Law Section of the Connecticut Bar Association urges this Committee to act favorably on the Act and commends this Committee for being on the forefront of the enactment effort for the UAPPJA.

